

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6614 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE K.R.VYAS

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

1 to 5 No.

KALPESH RUPJIBHAI JADAV

Versus

DISTRICT PRIMARY EDUCATION OFFICER

Appearance:

GIRISH PATEL ASSOC for Petitioner
MR PB BHATT, AGP, for the Respondent.

CORAM : MR.JUSTICE K.R.VYAS

Date of decision: 05/10/98

ORAL JUDGEMENT

Rule. Mr. P.B.Bhatt, learned Assistant Government Pleader waives service of the Rule. At the request of the learned Advocates, this petition is taken up for final hearing to-day.

The petitioner, by way of this petition has challenged the illegal action of the respondent in committing breach of the reservation policy stated in the

Government Resolution dated 11-12-1986. The petitioner belongs to Scheduled Caste. The petitioner has secured 74.86% marks in S.S.C.E. and 75.70% marks in P.I.C. and therefore eligible to be appointed as Vidya Sahayak in the Primary School. It is the grievance of the petitioner that in pursuance of the advertisement for the post of Vidya Sahayak in Sabarkantha District on the basis of the advertisement published in the news paper on 2-7-98. Even though the petitioner had applied for the same, the petitioner did not receive the interview call and on the contrary the petitioner was orally told that his application has been rejected. The petitioner on inquiry came to know from the reliable sources that his application has been rejected as he is not in the merit list prepared by the respondent authority for the Scheduled Caste category. It is the grievance of the petitioner that the respondent authority did not consider the meritorious SC and ST candidates for the general category but they have been placed in the respective categories of SC and ST and, therefore, if the meritorious candidates belonging to SC/ST would have been considered in the general list, the petitioner would have been included in the merit list prepared for the Schedule Caste candidates.

In Special Civil Application No. 6571 of 1998 decided by this Court (Coram:N.N.Mathur,J) on 13-8-98 the facts were that the petitioners in that case belonged to SEBC (Socially and Educationally Backward Class) and petitioner No.3 belonged to SC (Scheduled Caste) category. They passed SSC and PIC Examinations and were therefore eligible to be appointed as Vidya Sahayaks and Primary Teachers. Their merit marks for the purpose of the said selection were 75.25, 76.16 and 74.32 respectively. In that case the grievance of the petitioners was that inspite of the fact that they had come in merit, they were not considered in the general category only on the ground that they belonged to SEBC/SC/ST category. In that context, N.N.Mathur,J., after referring to the Resolution in that behalf and after referring to the decision of the Supreme Court in Ritesh R.Sah vs Dr. Y.L. Yamul and others, reported in AIR 1996 SC 1378 wherein it has been held that a candidate belonging to backward class but selected in general candidates is entitled to be considered in the general category as per merit, allowed the said petition and directed that the petitioners in that petition shall be considered in general category as per the merit. The learned Advocates appearing for the parties in this petition have submitted that the grievance of the petitioner is identical and covered by the aforesaid

decision and in view of this similar direction can be issued in this petition also.

In the result, this petition is allowed. The respondent is directed that the meritorious candidates belonging to SC/ST categories shall be considered in the general list and consequently the petitioner shall be included in the merit list prepared for the Scheduled Caste candidates. Rule is made absolute accordingly with no order as to costs. D.S. permitted.

case law on the point has passed the following order:

"I have heard learned counsel for the parties.

The Resolution after referring the agreement extracted as follows:

'The Government decided to implement the above agreement and directed that where members belonging to the Scheduled Castes and Scheduled Tribes are selected for appointment by direct selection in any service or post included in the State Services or Subordinate Services and Panchayat Services on the merit basis then such members shall be considered for appointment on unreserved posts which are filled in on merit along with other candidates not belonging to such castes and Tribes and such appointment on merit of the members belonging to such Castes and Tribes.'

The Apex Court in (Ritesh R.Sah vs Dr. Y.L.

Yamul and others), reported in AIR 1996 SC 1378 has held that a candidate belonging to backward class but selected in general candidates is entitled to be considered in the general category as per merit. Considering this, N.N.Mathur, J allowed the said petition and directed that the petitioners in that petition shall be considered in general category as per the merit. The learned Advocates appearing for the parties in this petition have submitted that the grievance of the petitioner is identical and covered by the

decision rendered by N.N.Mathur,J and in view of this similar direction can be issued in this petition also.

In the result, this petition is allowed.The respondent is directed that the meritorious candidates belonging to SC/ST categories shall be considered in the general list and consequently the petitioner shall be included in the merit list prepared for the Scheduled Caste candidates. Rule is made absolute accordingly with no order as to costs.D.S.permitted.

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